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SENATE BILL 6695

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State of Washington

60th Legislature

2008 Regular Session

By Senators Weinstein and Kline

Read first time 01/22/08. Referred to Committee on Consumer Protection & Housing.

1 AN ACT Relating to distressed home transactions; amending RCW  
2 61.34.020, 61.34.030, and 61.34.040; adding new sections to chapter  
3 61.34 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 61.34.020 and 1988 c 33 s 4 are each amended to read  
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 ~~(1) ("Pattern of equity skimming" means engaging in a least three~~  
10 ~~acts of equity skimming within any three year period, with at least one~~  
11 ~~of the acts occurring after June 9, 1988.~~

12 ~~(2) "Dwelling" means a single, duplex, triplex, or four unit family~~  
13 ~~residential building.~~

14 ~~(3) "Person" includes any natural person, corporation, joint stock~~  
15 ~~association, or unincorporated association.~~

16 (4)) An "act of equity skimming" occurs when:

17 (a)(i) A person purchases a dwelling with the representation that  
18 the purchaser will pay for the dwelling by assuming the obligation to

1 make payments on existing mortgages, deeds of trust, or real estate  
2 contracts secured by and pertaining to the dwelling, or by representing  
3 that such obligation will be assumed; and

4 (ii) The person fails to make payments on such mortgages, deeds of  
5 trust, or real estate contracts as the payments become due, within two  
6 years subsequent to the purchase; and

7 (iii) The person diverts value from the dwelling by either (A)  
8 applying or authorizing the application of rents from the dwelling for  
9 the person's own benefit or use, or (B) obtaining anything of value  
10 from the sale or lease with option to purchase of the dwelling for the  
11 person's own benefit or use, or (C) removing or obtaining appliances,  
12 fixtures, furnishings, or parts of such dwellings or appurtenances for  
13 the person's own benefit or use without replacing the removed items  
14 with items of equal or greater value; or

15 (b)(i) The person purchases a dwelling in a transaction in which  
16 all or part of the purchase price is financed by the seller and is (A)  
17 secured by a lien which is inferior in priority or subordinated to a  
18 lien placed on the dwelling by the purchaser, or (B) secured by a lien  
19 on other real or personal property, or (C) without any security; and

20 (ii) The person obtains a superior priority loan which either (A)  
21 is secured by a lien on the dwelling which is superior in priority to  
22 the lien of the seller, but not including a bona fide assumption by the  
23 purchaser of a loan existing prior to the time of purchase, or (B)  
24 creating any lien or encumbrance on the dwelling when the seller does  
25 not hold a lien on the dwelling; and

26 (iii) The person fails to make payments or defaults on the superior  
27 priority loan within two years subsequent to the purchase; and

28 (iv) The person diverts value from the dwelling by applying or  
29 authorizing any part of the proceeds from such superior priority loan  
30 for the person's own benefit or use.

31 (2) "Distressed home" means either:

32 (a) A dwelling that is in danger of foreclosure or at risk of loss  
33 due to nonpayment of taxes; or

34 (b) A dwelling that is in danger of foreclosure or that is in the  
35 process of being foreclosed due to a default under the terms of a  
36 mortgage.

37 (3) "Distressed home consultant" means a person who:

1       (a) Solicits or contacts a homeowner of a distressed home in  
2 writing, in person, or through any electronic or telecommunications  
3 medium and makes a representation or offer to perform any service that  
4 the person represents will:

5       (i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone  
6 a foreclosure sale;

7       (ii) Obtain forbearance from any servicer, beneficiary, or  
8 mortgagee;

9       (iii) Assist the homeowner to exercise a right of reinstatement  
10 provided in the loan documents or to refinance a loan that is in  
11 foreclosure or is in danger of foreclosure;

12       (iv) Obtain an extension of the period within which the homeowner  
13 may reinstate the homeowner's obligation or extend the deadline to  
14 object to a ratification;

15       (v) Obtain a waiver of an acceleration clause contained in any  
16 promissory note or contract secured by a mortgage on a distressed home  
17 or contained in the mortgage;

18       (vi) Assist the homeowner to obtain a loan or advance of funds;

19       (vii) Save the homeowner's residence from foreclosure;

20       (viii) Avoid or ameliorate the impairment of the homeowner's credit  
21 resulting from the filing of an order to docket or a petition to  
22 foreclose or the conduct of a foreclosure sale;

23       (ix) Purchase or obtain an option to purchase the homeowner's  
24 residence within twenty days of an advertised or docketed foreclosure  
25 sale;

26       (x) Arrange for the homeowner to become a lessee or tenant entitled  
27 to continue to reside in the homeowner's residence;

28       (xi) Arrange for the homeowner to have an option to repurchase the  
29 homeowner's residence; or

30       (xii) Engage in any documentation, grant, conveyance, sale, lease,  
31 trust, or gift by which the homeowner clogs the homeowner's equity of  
32 redemption in the homeowner's residence; or

33       (b) Systematically contacts owners of property that court records,  
34 newspaper advertisements, or any other source demonstrate are in  
35 foreclosure or are in danger of foreclosure.

36       "Distressed home consultant" does not mean a financial institution  
37 that the homeowner is a customer of or a nonprofit credit counseling  
38 service.

1       (4) "Distressed home consulting transaction" means an agreement  
2 between a homeowner and a distressed home consultant in which the  
3 distressed home consultant represents or offers to perform any of the  
4 services enumerated in subsection (3)(a) of this section.

5       (5) "Dwelling" means a single, duplex, triplex, or four-unit family  
6 residential building.

7       (6) "Financial institution" means any federally or state chartered  
8 bank or trust company, savings bank or savings and loan association, or  
9 credit union.

10       (7) "Foreclosure surplus transaction" means any transaction having  
11 the following components:

12       (a) A homeowner assigns some portion or all of the surplus proceeds  
13 of a future foreclosure sale on the homeowner's distressed home; and

14       (b) The consideration the homeowner receives for an assignment  
15 under (a) of this subsection, if any, is worth less than the amount of  
16 the surplus proceeds.

17       (8) "Homeowner" means a person who owns and occupies a dwelling as  
18 his or her primary residence, whether or not his or her ownership  
19 interest is encumbered by a mortgage, deed of trust, or other lien.

20       (9) "In danger of foreclosure" means any of the following:

21       (a) The homeowner has defaulted on the mortgage and, under the  
22 terms of the mortgage, the mortgagee has the right to accelerate full  
23 payment of the mortgage and repossess, sell, or cause to be sold, the  
24 property;

25       (b) The homeowner is at least thirty days delinquent on any loan  
26 that is secured by the property; or

27       (c) The homeowner has a good faith belief that he or she is likely  
28 to default on the mortgage within the upcoming four months due to a  
29 lack of funds, and the homeowner has reported this belief to:

30       (i) The mortgagee;

31       (ii) A person licensed or required to be licensed under chapter  
32 19.134 RCW;

33       (iii) A person licensed or required to be licensed under chapter  
34 19.146 RCW;

35       (iv) A person licensed or required to be licensed under chapter  
36 18.85 RCW;

37       (v) An attorney-at-law;

1       (vi) A mortgage counselor or other credit counselor licensed or  
2 certified by any federal, state, or local agency; or

3       (vii) Any other party to a distressed home consulting transaction.

4       (10) "Nonprofit credit counseling service" means a nonprofit  
5 organization described under section 501(c)(3) of the internal revenue  
6 code, or similar successor provisions, that is licensed or certified by  
7 any federal, state, or local agency.

8       (11) "Pattern of equity skimming" means engaging in at least three  
9 acts of equity skimming within any three-year period, with at least one  
10 of the acts occurring after June 9, 1988.

11       (12) "Person" includes any natural person, corporation, joint stock  
12 association, or unincorporated association.

13       NEW SECTION. Sec. 2. Foreclosure surplus transactions are  
14 declared unlawful and contrary to public policy. Any contract for a  
15 foreclosure surplus transaction is voidable by the homeowner at any  
16 time.

17       NEW SECTION. Sec. 3. (1) A distressed home consulting transaction  
18 must:

19       (a) Be in writing in at least twelve-point font;

20       (b) Be in the same language as principally used by the distressed  
21 property consultant to describe his or her services to the homeowner.  
22 If the agreement is written in a language other than English, the  
23 distressed property consultant shall cause the agreement to be  
24 translated into English and shall deliver copies of both the original  
25 and English language versions to the homeowner at the time of execution  
26 and shall keep copies of both versions on file in accordance with  
27 subsection (2) of this section. Any ambiguities or inconsistencies  
28 between the English language and the original language versions of the  
29 written agreement must be strictly construed in favor of the homeowner;

30       (c) Fully disclose the exact nature of the distressed home  
31 consulting services to be provided, including any foreclosure  
32 reconveyance that may be involved and the total amount and terms of any  
33 compensation to be received by the distressed home consultant or anyone  
34 working in association with the distressed home consultant;

35       (d) Be dated and signed by the homeowner and the distressed home  
36 consultant;

1 (e) Contain the complete legal name, address, telephone number, fax  
2 number, e-mail address, and internet address if any, of the distressed  
3 property consultant, and if the distressed property consultant is  
4 serving as an agent for any other person, the complete legal name,  
5 address, telephone number, fax number, e-mail address, and internet  
6 address if any, of the principal; and

7 (f) Contain the following notice in bold face type and in at least  
8 fourteen-point font:

9 "NOTICE REQUIRED BY WASHINGTON LAW

10 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF  
11 YOUR HOME.

12 . . . Name of distressed home consultant . . . or anyone working  
13 for him or her CANNOT guarantee you that he or she will be able to  
14 refinance your home or arrange for you to keep your home. Continue  
15 making mortgage payments until refinancing, if applicable, is approved.

16 If you sign a promissory note, lien, mortgage, deed of trust, or  
17 deed, you could lose your home and be unable to get it back."

18 (2) At the time of execution, the distressed property consultant  
19 shall provide the homeowner with a copy of the written agreement, and  
20 the distressed property consultant shall keep a separate copy of the  
21 written agreement on file for at least five years following the  
22 completion or other termination of the agreement.

23 (3) This section does not relieve any duty or obligation imposed  
24 upon a distressed home consultant by any other law including, but not  
25 limited to, the duties of a credit service organization under chapter  
26 19.134 RCW or a person required to be licensed under chapter 19.146  
27 RCW.

28 NEW SECTION. **Sec. 4.** A distressed home consultant has a fiduciary  
29 relationship with the homeowner, and each distressed home consultant is  
30 subject to all requirements for fiduciaries otherwise applicable under  
31 state law. A distressed home consultant's fiduciary duties include,  
32 but are not limited to, the following:

33 (1) To act in the homeowner's best interest and in utmost good  
34 faith toward the borrower, and not compromise a homeowner's right or  
35 interest in favor of another's right or interest, including a right or  
36 interest of the distressed home consultant;

1 (2) To disclose to the homeowner all material facts of which the  
2 distressed home consultant has knowledge that might reasonably affect  
3 the homeowner's rights, interests, or ability to receive the  
4 homeowner's intended benefit from the residential mortgage loan;

5 (3) To use reasonable care in performing his or her duties; and

6 (4) To provide an accounting to the homeowner for all money and  
7 property received from the homeowner.

8 NEW SECTION. **Sec. 5.** (1) A person may not induce or attempt to  
9 induce a homeowner to waive the homeowner's rights under this act.

10 (2) Any waiver by a homeowner of the provisions of this act is void  
11 and unenforceable as contrary to public policy.

12 NEW SECTION. **Sec. 6.** This act does not limit or replace the  
13 Washington common law doctrines of equitable mortgages and contract  
14 unconscionability.

15 **Sec. 7.** RCW 61.34.030 and 1988 c 33 s 2 are each amended to read  
16 as follows:

17 (1) Any person who wilfully engages in a pattern of equity skimming  
18 is guilty of a class B felony under RCW 9A.20.021. Equity skimming  
19 shall be classified as a level II offense under chapter 9.94A RCW, and  
20 each act of equity skimming found beyond a reasonable doubt or admitted  
21 by the defendant upon a plea of guilty to be included in the pattern of  
22 equity skimming, shall be a separate current offense for the purpose of  
23 determining the sentence range for each current offense pursuant to RCW  
24 9.94A.589(1)(a).

25 (2) Any person who knowingly enters into a foreclosure surplus  
26 transaction with a homeowner, or who arranges or facilitates a  
27 foreclosure surplus transaction for a homeowner, is guilty of a class  
28 B felony under RCW 9A.20.021. A foreclosure surplus acquisition shall  
29 be classified as a level II offense under chapter 9.94A RCW, and each  
30 act of foreclosure surplus acquisition found beyond a reasonable doubt  
31 or admitted by the defendant upon a plea of guilty shall be a separate  
32 current offense for the purpose of determining the sentence range for  
33 each current offense pursuant to RCW 9.94A.589(1)(a).

1       **Sec. 8.** RCW 61.34.040 and 1988 c 33 s 3 are each amended to read  
2 as follows:

3       In addition to the criminal penalties provided in RCW 61.34.030,  
4 the legislature finds ~~((and declares))~~ that ~~((equity-skimming~~  
5 ~~substantially-affects))~~ the practices covered by this chapter are  
6 matters vitally affecting the public interest~~((.~~~~The commission by any~~  
7 ~~person of an act of equity-skimming or a pattern of equity-skimming is~~  
8 ~~an unfair or deceptive act or practice and unfair method of competition~~  
9 ~~in the conduct of trade or commerce in violation of RCW 19.86.020))~~ for  
10 the purpose of applying chapter 19.86 RCW. A violation of this chapter  
11 is not reasonable in relation to the development and preservation of  
12 business and is an unfair method of competition for the purpose of  
13 applying chapter 19.86 RCW.

14       NEW SECTION. **Sec. 9.** Sections 2 through 6 of this act are each  
15 added to chapter 61.34 RCW.

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